

HOUSE BILL NO. 647

INTRODUCED BY D. BARRETT

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA REAL ESTATE BACKUP WITHHOLDING ACT; REQUIRING WITHHOLDING FOR INCOME TAX PURPOSES ON THE GAIN FROM THE SALE OR EXCHANGE OF CERTAIN MONTANA REAL ESTATE; ESTABLISHING A WITHHOLDING TAX RATE; PROVIDING EXCEPTIONS TO WITHHOLDING; ESTABLISHING REPORTING AND REMITTANCE REQUIREMENTS; REQUIRING THAT CERTAIN INFORMATION BE SUBMITTED WITH THE REALTY TRANSFER CERTIFICATE; PROHIBITING THE RECORDING OF A TRANSFER OF MONTANA REAL ESTATE OR A CHANGE IN OWNERSHIP RECORDS OF MONTANA REAL ESTATE FOR PROPERTY TAX PURPOSES IF THE REQUIRED INFORMATION IS NOT PROVIDED; PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT OF REVENUE; CLARIFYING THE LIABILITY OF CLERKS AND RECORDERS; AMENDING SECTION 7-4-2623, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 6] may be cited as the "Montana Real Estate Backup Withholding Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 6], the following definitions apply:

(1) "Certified calculated gain" means the gain the transferor certifies in writing to the department, under penalty of false swearing as provided in 45-7-202, that the transferor will realize on a disposition of Montana real estate.

(2) "Improvements" has the meaning provided in 15-1-101.

(3) "Montana real estate" means real estate or improvements located in Montana.

(4) "Principal residence" means a principal residence within the meaning of 26 U.S.C. 121.

(5) "Real estate" has the meaning provided in 15-1-101.

(6) "Sales price" means the total consideration for the transfer of Montana real estate, including the market value of any property transferred to the transferor, and any liability assumed or taken subject to the sales

1 price.

2 (7) "Transferor" means any person or entity disposing of Montana real estate.

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4 **NEW SECTION. Section 3. Withholding required on sale or exchange of Montana real estate --**
5 **rate.** Except as provided in [section 4], there must be withheld from the proceeds from a sale or exchange of
6 Montana real estate an amount equal to the lesser of:

7 (1) 2.5% of the sales price of the Montana real estate conveyed; or

8 (2) the amount of the transferor's certified calculated gain multiplied by the highest rate of tax provided
9 for in 15-30-103.

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11 **NEW SECTION. Section 4. Withholding -- application not required.** Withholding is not required on
12 the transfer of Montana real estate under the provisions of [section 3] if:

13 (1) the sales price of the Montana real estate conveyed is less than \$100,000;

14 (2) the transfer occurs:

15 (a) pursuant to a power of sale under a mortgage or deed of trust;

16 (b) as the result of a decree of foreclosure; or

17 (c) by deed in lieu of foreclosure; or

18 (3) the transferor establishes that:

19 (a) the transferor is an individual who is a Montana resident;

20 (b) the Montana real estate being transferred is the principal residence of the transferor or was the
21 principal residence of a decedent;

22 (c) the last use of the property being transferred was by the transferor as the transferor's principal
23 residence;

24 (d) the Montana real estate has been compulsorily or involuntarily converted within the meaning of 26
25 U.S.C. 1033 and the transferor intends to acquire property similar or related in service or use so that the gain is
26 not recognized under the provisions of 26 U.S.C. 1033;

27 (e) the Montana real estate is being relinquished in an exchange in which gain and loss is not recognized
28 pursuant to 26 U.S.C. 1031; or

29 (f) the transferor is a corporation, a pass-through entity, or a disregarded entity incorporated or organized
30 under the laws of the state of Montana.

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2 **NEW SECTION.** **Section 5. Reporting and remittance.** (1) The transferor shall report to the
3 department under oath, on a form prescribed by the department, all information necessary to compute the amount
4 withheld pursuant to [section 3] or to establish that the transferor is not required to withhold pursuant to [section
5 4].

6 (2) Within 5 business days of closing on the sale or exchange of Montana real estate, the transferor shall
7 file the report and remit the amount withheld, if any, to the department.

8 (3) A copy of the report and a copy of the payment, if any, for withholding must be attached to the realty
9 transfer certificate required by 15-7-305. The county clerk and recorder may not record any deed or other
10 instrument transferring title to Montana real estate if the copies required by this section are not provided.

11 (4) The department may not change any ownership records used for the assessment or taxation of
12 Montana real estate unless the copies required by subsection (3) are attached to the realty transfer certificate.

13 (5) Any amount required to be paid pursuant to [section 3] and remitted to the department pursuant to
14 this section is considered a payment on the account of the transferor for the purposes of individual income tax
15 under Title 15, chapter 30, or for the purposes of the corporation license tax or corporation income tax under Title
16 15, chapter 31. If the transferor is a pass-through entity, the payment is considered a payment on the account
17 of the pass-through entity's shareholders, partners, or members, as applicable.

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19 **NEW SECTION.** **Section 6. Rulemaking.** The department shall adopt rules to implement and
20 administer [sections 1 through 6].

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22 **Section 7.** Section 7-4-2623, MCA, is amended to read:

23 **"7-4-2623. Liability of clerk relating to duties as recorder.** A county clerk is liable to the party
24 aggrieved for three times the amount of the damages that may result and is punishable as provided in this code
25 if the county clerk to whom an instrument is delivered for record:

26 (1) neglects or refuses to record the instrument within reasonable time after receipt except when the
27 information required by law to record the instrument is not provided;

28 (2) falsely records an instrument or records an instrument in any other manner than as directed in this
29 part;

30 (3) neglects or refuses to keep in the clerk's office indexes that are required by this part or to make the

1 proper entries in the indexes; or

2 (4) alters, changes, or obliterates any records deposited in the clerk's office or inserts any new matter
3 in the records."

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5 **NEW SECTION. Section 8. Codification instruction.** [Sections 1 through 6] are intended to be codified
6 as an integral part of Title 15, chapter 30, part 2, and the provisions of Title 15, chapter 30, part 2, apply to
7 [sections 1 through 6].

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9 **NEW SECTION. Section 9. Applicability.** [This act] applies to transfers of Montana real estate
10 occurring after September 30, 2009.

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